

Appl. No.: 09/913,377
Group Art Unit: 1616
Response to Paper No. 7

REMARKS

Claims 9-37 are currently pending in the instant application. Applicants would like to note that while the Examiner has indicated that claims 1-8 are still pending, these claims were canceled, without prejudice, in the Preliminary Amendment filed by Applicants on August 13, 2001, along with Applicants' first submission under 35 U.S.C. §371. (*See*, Applicants' Preliminary Amendment, p. 6).

Claim 35 has been amended to replace the incorrect reference to claim 1 with reference to claim 9, as claim 1 was canceled in Applicants' Preliminary Amendment wherein claims 9-37 were added. This amendment has been made solely to correct a typographical error which resulted in a dependency on a canceled claim, and not for any reason based on prior art. Moreover, the correction of the dependency does not narrow the scope of the claim as the new claim from which it depends is no narrower than the original. Claim 35 is supported by the claims as originally filed and in the Specification, for example, at page 2, lines 14-30; and in the Examples. No new matter has been introduced. A complete listing of all claims ever presented is included herein in accordance with 37 C.F.R. §1.121(c). Entry of the amendment to claim 35 is therefore proper and respectfully requested.

In Paper No. 7, the Examiner indicates that claims 1-34 are allowed. On the basis of the comments set forth in the paragraph above, Applicants are assuming that the allowed claims are, in fact, claim 9-34.

In Paper No. 7, the Examiner rejects claims 35-37 under 35 U.S.C. §102(e), as being anticipated by U.S. Pat. No. 6,107,456 of Huibers, *et al.*, (hereinafter referred to as "Huibers"). Specifically, citing column 12 of Huibers, the Examiner contends that the reference discloses "a residue obtained from a pitch after saponification comprising 0.06% by weight of citrostadienol." (*See*, Paper No. 7, ¶ 2). On this basis, the Examiner argues that the claimed invention is anticipated.

Applicants respectfully traverse the Examiner's rejection, along with the contentions and arguments in support thereof for the following reasons.

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One embodiment of Applicants' claimed invention is directed to a composition comprising one or more natural phytosterol compounds, wherein the composition has a citrostadienol content of 0.5% by weight or less. Another embodiment of Applicants' claimed invention is directed to a phytosterol prepared by the process according to claim 9, wherein the process comprises: (a) providing a liquid phytosterol starting material obtained by transesterification of a distillation residue with an alkanol; (b) dissolving the liquid phytosterol starting material in a hydrocarbon solvent; and (c) crystallizing a phytosterol product, wherein the phytosterol product is substantially citrostadienol-free.

Huibers is directed to processes for separating sterols from tall oil. (*See*, Huibers, col. 2, lines 29-31). As the Examiner has pointed out, one example set forth in Huibers discloses a process wherein saponified tall oil pitch is subjected to separation via a wiped film evaporator. (*See*, Huibers, Example 6, cols. 11-12). In describing Example 6, Huibers notes that the residue of the wiped film evaporator contains 0.06% by weight citrostadienol. (*See*, Huibers, col. 12, lines 40-61).

However, what Huibers does not make clear and what the Examiner appears to have failed to consider is that the "Residue" of Example 6, as set forth in Table B, is NOT the sterol recovery feed. In the row of Table B labeled "Total these three sterols", it is indicated that the "Residue" contains 0.25% by weight sterol, whereas the "Internal Condenser" stream contains 24.95% by weight sterol and the "External Condenser" stream contains 34.72% by weight sterol. Table B also indicates that the "Internal Condenser" stream contains 6.72% by weight citrostadienol and that the "External Condenser" stream contains 7.12% by weight citrostadienol. Thus, it is apparent that the phytosterol compositions (*i.e.*, the Internal Condenser stream and the External Condenser stream) produced by the process disclosed in Huibers contain significant amounts of citrostadienol. Only the "Residue", which contains no significant amount of sterol, has low amounts of citrostadienol. The processes disclosed in Huibers are unable to provide a separation wherein the main sterol recovery stream contains the claimed low amount of citrostadienol.

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Accordingly, Applicants submit that the disclosure of Huibers is insufficient to anticipate Applicants' claimed invention. Reconsideration and withdrawal of the Examiner rejection under 35 U.S.C. §102 is respectfully requested.

In view of the remarks set forth above, Applicants submit that all pending claims patentably distinguish over the prior art of record and known to Applicants, either alone or in combination. Accordingly, reconsideration, withdrawal of the rejection and a Notice of Allowance for all pending claims are respectfully requested.

Respectfully submitted,

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(Date)

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